
TITLE 260 STATE DEPARTMENT OF TOXICOLOGY

Economic Impact Statement

LSA Document #10-610

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Subject to this Rule:

The proposed rule does not impose any costs or requirements on small businesses under [IC 4-22-2.1-5](#) and [IC 4-22-2-28](#). Breath-test instruments are purchased by the state of Indiana and are provided to law enforcement agencies by the Indiana State Department of Toxicology.

Estimated Average Annual Administrative Costs that Small Businesses Will Incur:

Because this rule does not impose any legal or administrative requirements on small businesses, there are no administrative costs to be incurred by such businesses.

Estimated Total Annual Economic Impact on Small Businesses:

The Department of Toxicology believes that this rule will generate no economic impact upon small businesses, because this rule imposes no duty that must be undertaken by any small business, and the average administrative cost imposed thereby on each such business is none.

Supporting Data, Studies, and Analyses:

The Department conducted, under the direct supervision of its Director, an extensive series of laboratory validation studies of several different breath-test instrument product lines, including the one that has been acquired. Professional staff of the Department, over the course of three years preceding this notice, have been in contact directly with a number of state toxicology laboratory systems around the country, to gather their impressions and their experience with the instrument selected, and with other instruments as well. The Special Assistant to the Dean traveled to the place of manufacture of the instrument, discussed the technology, assembly, installation, and support extensively with company management, and attended an annual Users' Conference attended by representatives of all the states having this breath-instrument system in use. The Department consulted the list of approved breath-test instrument technology platforms and brands, published by the National Highway Traffic Safety Administration (NHTSA), finding that this instrument is publicly listed by the federal Administrator as approved for the same purpose for which Indiana proposes to put it to use.

Regulatory Flexibility/Analysis of Alternative Methods:

The present generation of instruments in place is about 14 years old, and is becoming obsolete and more difficult to repair and support. State of the art includes dual technology platform (fuel cell and infrared) so as to rule out interference and the presence of "mouth alcohol". The instrument captures and transmits needed data regarding traffic safety patterns and its own need for maintenance, saving guesswork and time. Several different instruments were extensively tested in the Department's laboratory under the supervision of the Director. Finally, the Director is accorded plenary authority by statute ([IC 9-30-6-5\(a\)\(2\)](#)) to select and promulgate regulations concerning appropriate breath-testing instruments to be implemented statewide, and he has discharged this responsibility after careful consideration of all viable alternatives. The expenditure of the special appropriation for these instruments has already been made, and the continuing failure to install and use the instruments purchased has itself created the adverse economic impact caused by the failure to make use of acquired resources. The Department's law enforcement clients have long been aware of this implementation, and are eager to complete it and to become certified in the new technology over a planned one-year transition period.

Explanation of Preliminary Determination:

The Department has not made a determination that the rulemaking was necessary, because the equipment was properly acquired pursuant to a legislative appropriation for the specific purpose. The promulgation by the Director of a rule setting forth a "method [that] shall be followed" for the proper use of the approved instrument, which may include an abbreviated "checklist" of procedures for use by certified operators, is mandatory under [IC 9-30-6-5\(a\)\(2\)](#); see also [260 IAC 1.1-3-1](#).

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